

## CHAIRWOMAN MÁRQUEZ PETERSON'S PROPOSED AMENDMENT NO. 2

TIME/DATE PREPARED: January 29, 2021COMPANY: Arizona Corporation Commission (Code of Ethics) AGENDA ITEM NO: 15DOCKET No.: AU-00000E-17-0079 OPEN MEETING DATE: February 2, 2021

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**Purpose:** This amendment modifies Rules 2.3 (regarding decorum) and 3.1 (regarding harassment) to make them applicable to our fellow commissioners and improve the tone of the Commission.

Currently, Rules 2.3 and 3.1 do not apply to fellow commissioners. While they require commissioners to provide decorum and prohibit the harassment of Commission employees, lawyers, witnesses, and parties, they do not require commissioners to provide the same to their fellow commissioners. As a public body, and as representatives of statewide office, individuals serving in the office of Corporation Commissioner must afford their fellow commissioners every ounce of decorum required and refrain from using public time and resources to harass any person or party, including their fellow commissioners, for any reason, especially when acting in an official capacity during Commission proceedings or when using Commission resources.

Consistent with this effort, this amendment also 'picks up' the amendment filed by Former Chairman Bob Burns on March 8, 2018, which would have modified Rule 3.1 to include "political party affiliation" as an additional protected class for commissioners and employees. See Commissioner Burns Proposed Amendment No. 2 (Mar. 8, 2018) available at: <https://docket.images.azcc.gov/0000186315.pdf?i=1611070504996>. Chairman Burns explained: "Although political party affiliation may not be a status protected by law, I believe it is one that should be protected by this Commission." See Correspondence from Commissioner Burns (Jan. 19, 2018) available at: <https://docket.images.azcc.gov/0000185146.pdf?i=1611070504996>. I agree with the intent of Former Chairman Burns' amendment and believe it should be adopted. This amendment also removes the word "unlawful" from the term "unlawful harassment." Continuing to include this qualifier in the Commission's Code suggests that "lawful" harassment is somehow acceptable at the Commission. It is not. Harassment of any kind should not be tolerated at the Commission under any circumstances, and our Code of Ethics should reflect it.

In addition, this amendment modifies Rule 4.1 (regarding conflicts of interest) to suggest that Commissioners disqualify themselves from proceedings when Commissioners have personal or political bias or prejudice against another Commissioner.

Lastly, this amendment adds a new Rule 3.2 to make it explicitly clear that personal insults or attacks made by any person during official Commission meetings and proceedings shall not be tolerated. As many Commissioners come to the Commission as former Legislators, they are familiar with the expectations set on them to maintain order and decorum in formal debates. The new Rule 3.2 mimics language utilized by the House and Senate Rules and expands on it to provide even more protections for the Commission.

### **AMEND Rule 2.3:**

Commissioners should maintain order and decorum with each other and in the meetings and proceedings before them. Commissioners should be patient, dignified, and courteous to litigants, witnesses, lawyers, and others with whom the Commission deals in an official capacity, including fellow Commissioners, and should require similar conduct of their fellow Commissioners, lawyers, staff, and others subject to the Commissioners' direction and control. Commissioners should afford to every person who is legally interested in a proceeding, or his or her lawyer, the full right to be heard according to law.

*Source:* NARUC Code of Ethics, Canon III; Ariz. Code of Judicial Conduct, Canon II, Rule 2.8

### **AMEND Rule 3.1:**

The Commission is committed to maintaining human dignity and protecting its employees and fellow Commissioners from ~~unlawful~~ harassment, whether it is of a sexual nature or based on race, color, national origin, religion, age, disability, genetic information, gender, pregnancy, military or veteran status, political affiliation, or any other status protected by law. Commissioners are prohibited from engaging in ~~unlawful~~ harassment in any form, whether verbal, physical or visual.

*Source:* 42 U.S.C. § 2000e, et seq.; 29 U.S.C. § 621, et seq.; 42 U.S.C. § 12101, et seq.; Ariz. Code of Judicial Conduct, Canon II, Rule 2.3

### **ADD a new Rule 3.2:**

To preserve the order, decorum, and dignity of the Commission, the office of Commissioner, and the Commission's public meetings and proceedings, all Commission discussions, questions, and comments made during public meetings and proceedings shall reflect an objective and impersonal interchange between everyone involved, including Commissioners, Commission employees, litigants, witness, stakeholders, members of the public, and all others with whom the Commission deals in an official capacity. No Commissioner, Commission employee, litigant, witness, stakeholder, or member of the public shall during any public meeting or proceeding before the Commission use any hateful, vicious, offensive, or personal speech or language that is intended to attack, offend, harass, impugn, arraign, charge, indict, misrepresent, or insult another Commissioner, Commission employee, litigant, witness, stakeholder, member of the public, or other person or entity with whom the Commission deals in an official capacity. No Commissioner during any public meeting or proceeding before the Commission shall, directly or indirectly, by any form of words, impute or insinuate to another Commissioner any conduct, characteristic, condition, or motive unworthy or unbecoming of a Commissioner or incompatible with the proper exercise of the Commissioner's lawful office, including with respect to any question, comment, proposal, or vote made or offered by another Commissioner. No Commissioner shall interrupt another Commissioner in discussions, questions, or comments without the Commissioner's consent, and to obtain such consent, the Commissioner shall first address the Chairman.

#### AMEND Rule 4.1:

Commissioners or their relatives who have a substantial interest in any contract, sale, purchase, or service to the Commission shall disclose that interest in the public records of the Commission, and shall refrain from voting on or participating in matters in such contract, sale, or purchase. Commissioners shall also disclose any substantial interests in any decision of the Commission, and shall refrain from participating in any manner in such decisions.

*Source:* A.R.S. § 38-501, et seq.

*Comment:* A Commissioner should disqualify himself or herself in a proceeding where that Commissioner determines that he or she cannot be impartial, such as when the Commissioner has a personal or political bias or prejudice concerning a party or another Commissioner. Commissioners should also not allow family, social, or other relationships, including with fellow Commissioners, to influence their official conduct or judgment. A substantial interest exists if all of the following are present: (i) the decision could affect, either positively or negatively, an interest of the Commissioner or his/her relative; (ii) the interest is pecuniary or proprietary, such as a financial interest or ownership interest; and (iii) the interest is not “remote” as defined by A.R.S. § 38-502(10).

**\*\* Make all conforming changes**

<b>THIS AMENDMENT:</b>		
_____ Passed _____	Passed as amended by _____	
_____ Failed _____	_____ Not Offered _____	_____ Withdrawn _____